

WANDA C. AND WILLIAM B. SCHEIDT ET AL.

IBLA 77-181

Decided June 8, 1977

77-184

77-186

77-191

Appeals from decisions of the Wyoming, Montana, and New Mexico State Offices, Bureau of Land Management, requiring additional rental prior to the issuance of noncompetitive oil and gas leases. W 56747, W 56748, W 56749, W 57594, M 35534, NM 28684, NM 28685, NM 28728, NM 28936, NM 29433 (Okla.).

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals -- Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

APPEARANCES: Patrick H. Kernan, Esq., Oklahoma City, Oklahoma, for appellants, Wanda C. and William B. Scheidt; Robert Barnes, pro se; Guy M. Willis, pro se; Francis E. Malloy, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The above-captioned appellants protest variously decisions of the Wyoming, Montana, and New Mexico State Offices, Bureau of Land Management (BLM), all requiring payment of advance rental at the rate of \$1 per acre prior to the issuance of noncompetitive oil and gas leases. Since these cases all present the same issue for decision, they are here consolidated for the sake of efficiency.

Appellants William B. and Wanda C. Scheidt were informed by letter dated December 17, 1976, that their simultaneously filed oil

and gas lease offers had been drawn by the Wyoming State Office, BLM, thus entitling them to first priority as offerors for oil and gas leases on BLM parcels in Kansas designated W 56747, W 56748, W 56749. Thereafter William B. Scheidt "open filed" for oil and gas rights on another tract in Kansas, W 57954, and submitted with the filing, advance rental calculated at the then applicable rental rate of 50 cents per acre. The Scheidts were subsequently notified, by letters dated January 27, 1977, that advance rental on all four parcels would be doubled and an additional payment would be required if the leases were to issue.

Appellant Robert Barnes, by an over-the-counter offer submitted to the Montana State Office, BLM, on October 26th, 1976, requested an oil and gas lease on a tract in that state, M-35534. By decision of the Montana State Office dated January 20, 1977, Barnes was required to remit additional rental payment at the rate of \$1 per acre or face the rejection of his offer.

Appellant Guy M. Willis, by over-the-counter offers submitted to the New Mexico State Office, BLM on August 18, 1976 (two offers), August 19, 1976 and September 15, 1976, sought to acquire oil and gas leases on tracts in that state identified, respectively, by serial numbers NM 28684, NM 28685, NM 28728 and NM 28936. Willis remitted the \$10 filing fee and advance rental at the rate of 50 cents per acre, with each of his offers. By decision dated February 16, 1977, the New Mexico State Office, BLM, ordered payment of additional rental at the increased rate of \$1 per acre for all four of the above-mentioned offers.

Appellant Francis E. Malloy, by virtue of a simultaneous oil and gas lease offer drawn by the New Mexico State Office, BLM in a drawing held December 10, 1976, acquired first priority as an offeror for the parcel identified as NM 29433 (Oklahoma). On January 18, 1977, Malloy was issued a receipt for rental paid on the lease tract at a rate of 50 cents per acre. Subsequently, by decision of February 9, 1977, the New Mexico State Office directed Malloy to remit additional rental at the rate of \$1 per acre.

Appellants Scheidt, Barnes, Willis and Malloy all appeal from the BLM decisions which direct them to pay additional advance rental at the increased rate of \$1 per acre. In support of their protests, appellants all note that their offers were filed with BLM before the effective date of the rental rate increase as set out at 42 F.R. 1032 (January 5, 1977), revising 43 CFR 3103.3-2. Appellants all contend that it is unfair to penalize them for delays in the processing of their offers which resulted in the issuance of their leases after the February 1, 1977, effective date of the rental rate increase. Appellants Scheidt argue that their contractual rights were impaired by an "ex post facto" regulation in that they had

paid advance rental at 50 cents per acre before the date of publication in the Federal Register of the rate revision regulation. They contend that acceptance of the applications and advance rental vested them with all rights connected with the particular lease and that the issuance of the lease in question was merely a clerical or ministerial matter after this alleged, contractual "acceptance."

[1] The assertion that a vested right in a federal oil and gas lease arises from BLM's acceptance of an application and advance rental payment is wholly without merit. We addressed this argument under virtually identical facts in Raymond N. Joeckel, 29 IBLA 170, 172 (1977), wherein we held that the filing of an oil and gas lease offer prior to the promulgation of the regulation increasing the rental did not vest in the applicant any vested right protected by the Fifth Amendment which would preclude subjecting him to the operation of the amended regulation. Joeckel, *supra*, p. 173. While the issue of impairment of contract was not raised in that case, the reasoning of the opinion is equally apt in meeting the Article I, section 10 impairment argument raised in the case before us. Quoting from Hannifin v. Morton, 444 F.2d 200 (10th Cir. 1971), the Joeckel opinion states, at p. 171:

It has been held that an application for a federal oil lease is a hope or perhaps expectation rather than a vested property right. See Schraier v. Hickel, 136 U.S. App. D.C. 81, 419 F.2d 663, 666-667 (1969). To hold otherwise, and to thereby recognize that the mere filing of an application creates a property right which is immune from modification, would seriously handicap the Secretary in the exercise of his proprietary duties.

The Joeckel decision has been reaffirmed in Doris N. Sterkel, 30 IBLA 39 (1977); Raymond N. Joeckel, 30 IBLA 316 (1977); Y. D. Exploration Inc., 30 IBLA 209 (1977), all of which required payment of the increased rental for any lease issued after February 1, 1977. See also Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963). We have consistently held that a preference right to an oil and gas lease is a hope or expectation rather than a valid claim against the Government, and appellants thus have no contractual rights which could be impaired by the rental rate increase of which they complain. Paula T. Jones, 24 IBLA 76 (1976); Duncan Miller, 20 IBLA 1 (1975).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Joseph W. Goss  
Administrative Judge

